

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

JOSHUA HERDER,
Plaintiff,

v.

WARDEN WAHL, et al.,
Defendants.

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CIVIL ACTION NO. 23-CV-0998

ORDER

AND NOW, this 3rd day of May, 2023, upon consideration of Joshua Herder's Motion to Proceed *In Forma Pauperis* (ECF No. 4), Prisoner Trust Fund Account Statement (ECF No. 5), and *pro se* Complaint (ECF No. 1), it is **ORDERED** that:

1. Leave to proceed *in forma pauperis* is **GRANTED** pursuant to 28 U.S.C. § 1915.
2. Joshua Herder, #HY-9316, shall pay the full filing fee of \$350 in installments, pursuant to 28 U.S.C. § 1915(b), regardless of the outcome of this case. The Court directs the Superintendent of SCI Waymart or other appropriate official to assess an initial filing fee of 20% of the greater of (a) the average monthly deposits to Herder's inmate account; or (b) the average monthly balance in Herder's inmate account for the six-month period immediately preceding the filing of this case. The Superintendent or other appropriate official shall calculate, collect, and forward the initial payment assessed pursuant to this Order to the Court with a reference to the docket number for this case. In each succeeding month when the amount in Herder's inmate trust fund account exceeds \$10.00, the Superintendent or other appropriate official shall forward payments to the Clerk of Court equaling 20% of the preceding month's income credited to Herder's inmate account until the fees are paid. Each payment shall refer to the docket number for this case.

3. The Clerk of Court is **DIRECTED** to send a copy of this Order to the Superintendent of SCI Waymart.
4. The Complaint is **DEEMED** filed.
5. Herder's Complaint is **DISMISSED WITH PREJUDICE** for failure to state a claim, pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) for the reasons stated in the Court's Memorandum. The dismissal of this § 1983 case does not constitute a bar to any collateral attacks by Herder against his state proceedings. *See Rushing v. Pennsylvania*, 637 F. App'x 55, 58 n.4 (3d Cir. 2016) (*per curiam*).
6. The Clerk of Court shall **CLOSE** this case.

BY THE COURT:

/s/ John Milton Younge

JOHN MILTON YOUNGE, J.